

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MARIO MARCUS DOMINGUEZ

Petitioner,

VS.

DOUGLAS DRETKE, Director
Texas Department of Criminal Justice,
Correctional Institutions Division

Respondent.

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NO. 3-05-CV-0269-L

MEMORANDUM ORDER

Petitioner Mario Marcus Dominguez, appearing *pro se*, has filed a motion for extension of time to file a notice of appeal and a motion for certificate of appealability. For the reasons stated herein, the motion is granted.

A notice of appeal in a civil case must be filed with the district clerk "within 30 days after the judgment or order appealed from is entered." FED. R. APP. P. 4(a)(1)(A). However, a district court may extend the time for filing a notice of appeal if:

- (i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and
- (ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

FED. R. APP. P. 4(a)(5)(A).

Petitioner's application for writ of habeas corpus was dismissed in part and denied in part by judgment entered on December 30, 2005. Therefore, his notice of appeal was due no later than

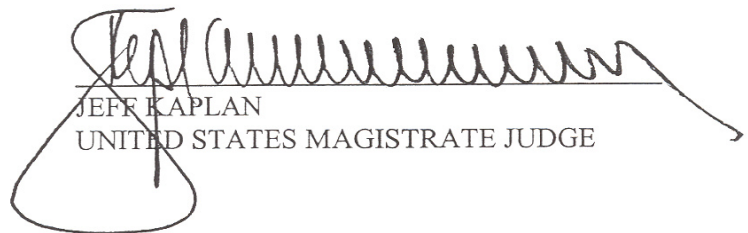
January 30, 2006.¹ In support of his motion for extension of time, petitioner alleges that he has limited access to the prison law library and needs more time to research and prepare his notice of appeal. Such an excuse constitutes "good cause" for an extension of time. *See Harris v. Cockrell*, No. 3-01-CV-2492-M, 2003 WL 21500397 at *2 (N.D. Tex. Apr. 9, 2003) (Lynn, J.) ("good cause" shown where prisoner lacked access to legal materials "due to circumstances beyond his control"). Accordingly, petitioner's motion should be granted.

RECOMMENDATION

Petitioner's motion for extension of time to file a notice of appeal and a motion for certificate of appealability is granted. The federal rules of appellate procedure provide that "[n]o extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 10 days after the date when the order granting the motion is entered, whichever is later." FED. R. APP. P. 4(a)(5)(C). Therefore, petitioner must file a notice of appeal on or before **March 1, 2006**.

SO ORDERED.

DATED: February 6, 2006.


JEFF KAPLAN
UNITED STATES MAGISTRATE JUDGE

¹ The 30th day after entry of judgment fell on Sunday, January 29, 2006. As a result, petitioner had until the following Monday, January 30, 2006, to file a notice of appeal. *See* FED. R. APP. P. 26(a)(3).